

Remarks

This is in response to the Final Office Action dated **July 23, 2009**. Claims 38-41 and 43-52 are pending in this application. Claims 41 and 43 have been withdrawn from consideration. The Office Action rejected claims 38-40, 44-48 and 52 under 35 USC § 102 over Gianturco (US 5282824), or in the alternative under 35 USC § 103 over Gianturco; rejected claim 50 under 35 USC § 103 over Gianturco; and objected to the Amendment filed 3/30/2009, alleging that new claims 49 and 51 present new matter.

The rejections and objections asserted in the Office Action are respectfully traversed. Reconsideration in view of the following remarks is requested.

Specification

The Office Action objected to the Amendment filed 3/30/2009, alleging that new claims 49 and 51 present new matter. These objections are traversed.

The immediate application was initially filed with claims 38-45, which were copied from US 2003/0055485 to Lee. The '485 application appears to have been abandoned by Lee, who filed a continuation that published as US 2008/0281404.

As previously noted in the Amendment filed 3/30/2009 at page 6, claims 46-52 have been copied from US 2008/0281404 – the Lee continuation.

Please note that claims 49 and 51 include limitations similar to withdrawn claims 41 and 43, and that the Amendment filed 3/30/2009 stated that newly added claims 46-48, 50 and 52 are believed to read upon elected species IV, corresponding to Figure 5a.

Claim 49

The Office Action asserts, “The added material which is not supported by the original disclosure is as follows: claim 49: circumferential connection struts extend in two opposite directions.” See page 2.

The specification states, “The invention further contemplates embodiments in which all interconnecting elements are similarly oriented as well as embodiments in which adjacent sets of interconnecting elements extending between adjacent pairs of segments are oppositely oriented.” See page 16, line 31-page 17, line 1.

Therefore, the subject matter of claim 49 is supported by the original disclosure, and Applicants request withdrawal of the objection.

Claim 51

The Office Action asserts, “The added material which is not supported by the original disclosure is as follows...claim 51: circumferential connection struts angled with the circumference of the stent.” See page 2.

Applicants acknowledge a potential issue of indefiniteness based upon the plain meaning of the terms used in claim 51, specifically a requirement that a “circumferential connection strut” extend at an angle to a stent circumference – i.e. extend in a direction that is not purely circumferential. However, when the meaning of “circumferential connection strut” as defined by Lee is understood, claim 51 is consistent with independent claim 46 because “circumferential connection strut” is not limited to struts that extend purely in a circumferential direction.

Independent claim 46, which recites “circumferential connection struts,” and claim 51 were copied from US 2008/0281404 to Lee in order to provoke an interference.

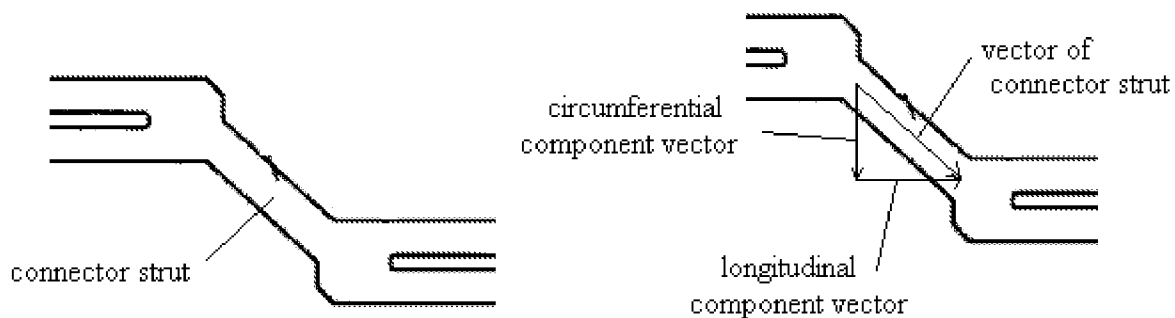
In this situation, the Examiner must adopt the definitions, meanings, and/or usages of the terms in the copied claims ***as those terms are used by Lee***, because “[w]hen interpretation is required of a claim that is copied for interference purposes, the copied claim is viewed in the context of the patent from which it was copied.” *In re Spina*, 975 F.2d 854, 858, 24 USPQ2d 1142, 1145 (Fed. Cir. 1992), citing *DeGeorge v. Bernier*, 768 F.2d 1318, 1322, 226 USPQ 758, 761 (Fed.Cir. 1985) (if claim language is ambiguous “resort must be had to the specification of the patent from which the copied claim came”). “A claim is not interpreted one way in light of the specification in which it originally was granted, and another way in light of the specification into which it is copied as a proposed interference count.” *In re Spina*, 24 USPQ2d at 1145.

The scope of a claim term must be clearly determined by giving the claims the “broadest reasonable interpretation consistent with the specification.” See *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) and MPEP § 2111.

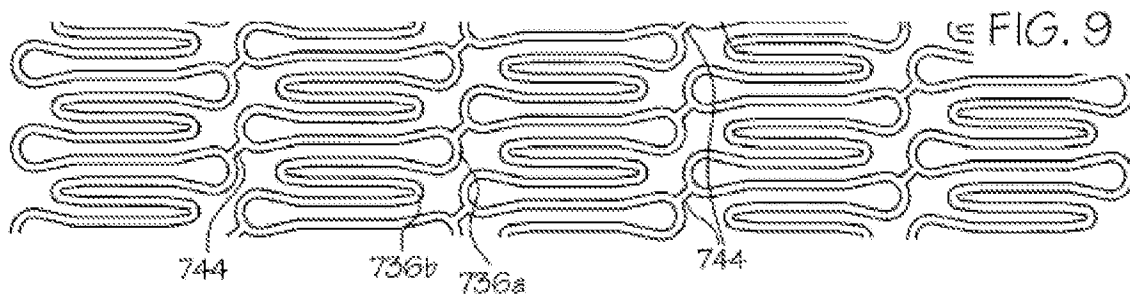
Lee (US 2008/0281404) provides the following definition at paragraph 0022, “The phrase “circumferential connecting struts” or “circumferential connecting members” will be

understood to mean struts or members that interconnect adjacent circumferential support structures 12 and **have a spacial component or vector that extends in a circumferential direction** about the stent 12” (emphasis added).

Therefore, the definition of the term “circumferential connection strut” allows for connecting elements that have a component vector extending in a circumferential direction. A “circumferential connection strut” that is angled with respect to a stent circumference, as recited in claim 51, can include a circumferential vector component and a longitudinal vector component, for example as illustrated below.



The immediate application includes several Figures that illustrate interconnecting elements that include a circumferential component vector. See e.g. Figure 4b, Figure 6 and Figure 9, and excerpt from which is provided below.



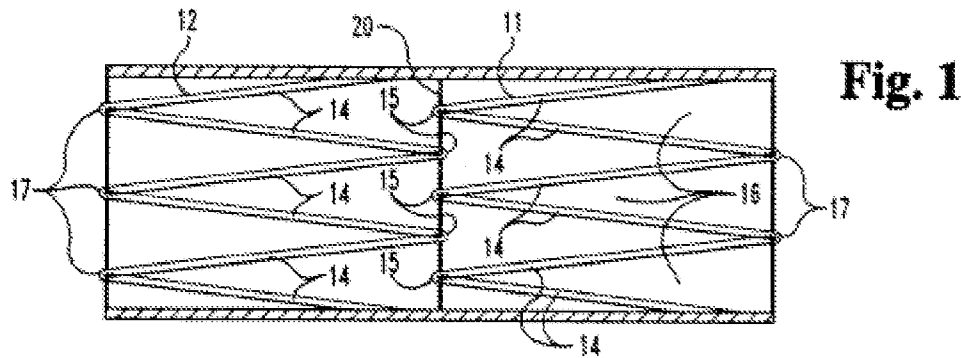
Therefore, the subject matter of claim 51 is supported by the original disclosure, and Applicants request withdrawal of the objection.

Claim Rejections

The Office Action rejected claims 38-40, 44-48 and 52 under 35 USC § 102 over Gianturco, or in the alternative under 35 USC § 103 over Gianturco; and rejected claim 50 under 35 USC § 103 over Gianturco. These rejections are traversed.

Independent claims 38, 45 and 46 each recite “circumferential connecting struts” (emphasis added). Gianturco does not teach a stent in accordance with all of the limitations of the rejected claims.

The embodiment of Gianturco relied upon in the rejection uses a thread 20 to tie together adjacent stents 11, 12. See Figure 1, provided below, and column 2, line 66-column 3, line 2.



The rejection characterizes the thread 20 as the claimed “circumferential connecting struts.” See Office Action at page 3. This characterization is traversed.

A person of ordinary skill in the art would recognize that a “circumferential connecting strut” is a strut. The definition of a “strut” generally requires the ability to resist longitudinal compression. See e.g. definition of strut provided below.

strut² [struht] [Show IPA](#) ,noun, verb, strut-ted, strut-ting.

—noun

1. any of various structural members, as in trusses, primarily intended to resist longitudinal compression. See diags. under [KING POST](#), [QUEEN POST](#).

See strut. Dictionary.com. *Dictionary.com Unabridged (v 1.1)*. Random House, Inc.
<http://dictionary.reference.com/browse/strut> (accessed: September 10, 2009).

The Gianturco thread 20 is not a “strut” because the thread 20 will not resist longitudinal compression and does not meet the definition of a “strut.” Therefore, Gianturco does not disclose or suggest a “circumferential connecting strut” as recited in the rejected independent claims, and Gianturco does not anticipate any of the rejected claims, or any claim dependent therefrom.

The Office Action does not propose a modification to Gianturco that would result in a stent that meets the limitations of the rejected claims.

Thus, the Office Action has not asserted a *prima facie* case of anticipation or obviousness against any of the rejected claims, and Applicants request withdrawal of the rejections asserted over Gianturco.

Claims 40, 45 and 48

Claim 40 recites “wherein at least some of the circumferential connecting struts have a width greater than a width of the longitudinal struts.” Claims 45 and 48 include similar limitations.

The rejection discusses “circumferential widths,” which Applicants have interpreted as discussing the span of a given Gianturco element in a circumferential direction. See Office Action at page 3. The rejection then asserts that, somehow, the thread 20 has a width that is greater than the width of a strut 14. See Office Action at page 3. This assertion is traversed.

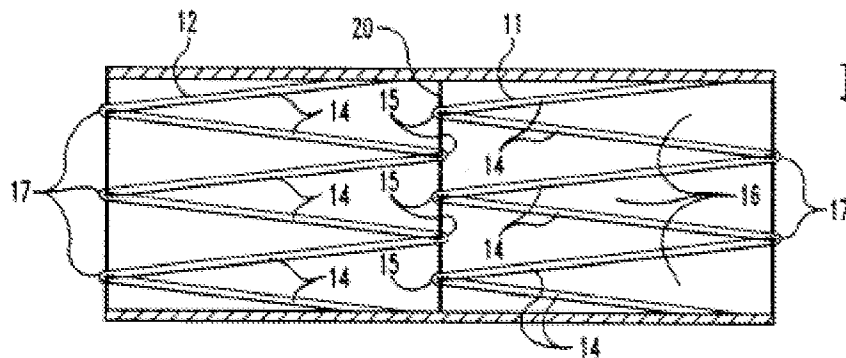


Fig. 1

Claims 40, 45 and 48 discuss a “width” of a circumferential connecting strut as compared to a “width” of a longitudinal strut. These claims do not discuss a “circumferential width” as recited in the rejection. Applicants request that any future analysis of claims 40, 45 and 48 discuss the “width” as recited in the claims, and not a “circumferential width” or span in the circumferential direction.

Conclusion

Based on at least the foregoing amendments and remarks, Applicants respectfully submit this application is in condition for allowance. Favorable consideration and prompt allowance of claims 38-41 and 43-52 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

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